

ORIGINAL

KUNTZ, J.

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U.S. DISTRICT COURT E.D.N.Y.  
★ SEP 04 2018 ★

CV 18-5079

SCANLON, M.J. BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Oscar L. Sanders, POA0329  
Clinton Correctional Facility  
Dannemora, NY 12929  
Plaintiff,

P.O.B. 2000

CIVIL RIGHTS COMPLAINT  
42 U.S.C. § 1983

[Insert full name of plaintiff/prisoner]

JURY DEMAND

YES ☒ NO ☐

-against-

Queens District Attorney  
Richard J. Brown  
125-100 31st Ave  
Kew Gardens, NY 11415

Defendant(s).

[Insert full name(s) of defendant(s). If you need additional space, please write "see attached" and insert a separate page with the full names of the additional defendants. The names listed above must be identical to those listed in Part I]

- I. Parties: (In item A below, place your name in the first blank and provide your present address and telephone number. Do the same for additional plaintiffs, if any.)

A. Name of plaintiff

Oscar L. Sanders II

If you are incarcerated, provide the name of the facility and address:

Clinton Correctional Facility (Main)  
P.O.B. 2000  
Dannemora, NY 12929  
Prisoner ID Number: 18A0329

if you are not incarcerated, provide your current address:

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Telephone Number: 

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B. List all defendants. You must provide the full names of each defendant and the addresses at which each defendant may be served. The defendants listed here must match the defendants named in the caption on page 1.

Defendant No. 1

Richard A. Brown  
Full Name  
District Attorney  
Job Title  
125-10 Queens Blvd  
Address  
Kew Gardens, NY 11415

Defendant No. 2

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Full Name

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Job Title

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Address

Defendant No. 3

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Full Name

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Job Title

Defendant No. 4

Address

Full Name

Job Title

Address

Defendant No. 5

Full Name

Job Title

Address

II. Statement of Claim:

(State briefly and concisely, the facts of your case. Include the date(s) of the event(s) alleged as well as the location where the events occurred. Include the names of each defendant and state how each person named was involved in the event you are claiming violated your rights. You need not give any legal arguments or cite to cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. You may use additional 8 ½ by 11 sheets of paper as necessary.)

Where did the events giving rise to your claim(s) occur?

NYC

Queens County,

When did the events happen? (include approximate time and date)

Early Supreme Court on August 11, 2010

Facts: (what happened?)

My constitutional right(s) to be free from unreasonable searches and seizures was violated when police, without either a search warrant or consent, took my clothing, which had been placed in a clear plastic bag and left on the hospital floor near where I was being treated for a gunshot wound; since the officer did not know, at time of the search, that the entry and exit wounds were located on an area of my body that would have been covered by the clothes I wore at time of shooting, officer lacked probable cause to believe that my clothes were the instrumentality of a crime. It was only then, I was subsequently charged with possession of a weapon (which the gun central to this case was never recovered.) Therefore, the 2010 conviction was exonerated in 2016, and I was released from out of state custody. (See attached Exhibit A).

II.A. Injuries. If you are claiming injuries as a result of the events you are complaining about, describe your injuries and state what medical treatment you required. Was medical treatment received?

I underwent two fractured ribs and a punctured lung on Rikers Island by Correctional Officers assault, in 2012. In 2015, my only child (23) was murdered and state custody denied me to attend his funeral and or burial which left me psychologically unsettled. Aside from my gunshot wound to the

People v. Sanders, 26 N.Y.3d 773 (2016)

47 N.E.3d 770, 27 N.Y.S.3d 491, 2016 N.Y. Slip Op. 01255

**[2] Searches and Seizures**

— Necessity of and preference for warrant, and exceptions in general

Warrantless searches and seizures are per se unreasonable unless they fall within one of the acknowledged exceptions to Fourth Amendment's warrant requirement. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

**[3] Searches and Seizures**

— Presumptions and Burden of Proof

Where a warrant has not been obtained, it is the People who have burden of overcoming the presumption that a search is unreasonable.

Cases that cite this headnote

26 N.Y.3d 773  
Court of Appeals of New York.

The PEOPLE of the State of New York, Respondent,  
v.

Oscar SANDERS, Appellant.

Feb. 23, 2016.

**Synopsis**

**Background:** Following denial of his motion to suppress evidence recovered during a warrantless search of his clothing while he was in a hospital, defendant was convicted in the Supreme Court, Queens County, Barry Kron, J., of second-degree and third-degree criminal possession of a weapon. He appealed. The Supreme Court, Appellate Division, 119 A.D.3d 878, 991 N.Y.S.2d 66, affirmed, and defendant was granted leave to appeal.

**[Holding:]** The Court of Appeals, Fahey, J., held that warrantless search and seizure of clothing left in plastic bag on floor of hospital room was unlawful.

Reversed and remitted.

West Headnotes (3)

**[1] Searches and Seizures**

— Probable Cause

Defendant's constitutional right to be free from unreasonable searches and seizures was violated when police, without either a search warrant or defendant's consent, took his clothing, which had been placed in a clear plastic bag and left on the hospital floor near where he was being treated for a gunshot wound; since the officer did not know, at time of the search, that the entry and exit wounds were located on an area of defendant's body that would have been covered by the clothes defendant wore at time of the shooting, officer lacked probable cause to believe that defendant's clothes were the instrumentality of a crime. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

**Attorneys and Law Firms**

\*\*\*491 Lynn W.L. Fahey, Appellate Advocates, New York City (Rahshanda Sibley of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens (William H. Branigan, Robert J. Masters and John M. Castellano of counsel), for respondent.

**OPINION OF THE COURT**

FAHEY, J.

\*\*\*770 [1] \*775 The primary issue on this appeal is whether defendant's constitutional right to \*\*\*771 \*\*\*492 be free from unreasonable searches and seizures was violated when police took defendant's clothing, which had been placed in a clear hospital bag, without either a warrant or his consent. Under the circumstances of this case, we conclude that the seizure was unconstitutional, and that the part of defendant's motion seeking to suppress that physical evidence should have been granted.

On August 11, 2010, defendant "walked in" to Jamaica Hospital in Queens seeking treatment for a gunshot wound. Pursuant to its protocol, and as required by law (Penal Law § 265.25), the hospital reported the shooting to

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shooting. More important, however, is what the evidence presented at the suppression hearing does *not* establish. That evidence does not show that, before the seizure, the testifying officer knew that entry and exit wounds were located on an area of defendant's body that would have been covered by the clothes defendant wore at the time of the shooting. Similarly, the record of that proceeding contains no other indicium that could have given rise to a reasonable belief that the shooting had affected defendant's clothes. To that end, there is no record support for the lower \*778 courts' conclusion that the investigating officer had probable cause to believe that defendant's clothes were the instrumentality of a crime (*see generally* *People v. Cook*, 85 N.Y.2d 928, 931, 626 N.Y.S.2d 1000, 650 N.E.2d 847 [1995]; *cf. generally* *People v. Salvodon*, 127 A.D.3d 1239, 1240–1241, 6 N.Y.S.3d 674 [2d Dept.2015] ).

Consequently, for the foregoing reasons we conclude that the seizure was illegal and the items seized were improperly admitted into evidence at trial. In view of our determination that defendant's motion to suppress

the physical evidence should \*\*773 \*\*\*494 have been granted, we do not address defendant's remaining contentions.<sup>3</sup>

Accordingly, the order of the Appellate Division should be reversed, defendant's motion insofar as it sought to suppress the physical evidence granted, the judgment vacated, and the case remitted to Supreme Court for further proceedings in accordance with this opinion.

Judges PIGOTT, RIVERA, ABDUS-SALAAM and STEIN concur; Chief Judge DiFIORE and Judge GARCIA taking no part.

Order reversed, defendant's motion insofar as it sought to suppress the physical evidence granted, judgment vacated and case remitted to Supreme Court, Queens County, for further proceedings in accordance with the opinion herein.

#### All Citations

26 N.Y.3d 773, 47 N.E.3d 770, 27 N.Y.S.3d 491, 2016 N.Y. Slip Op. 01255

#### Footnotes

- 1 The gun central to this case was never recovered.
- 2 Defendant also contends that the Appellate Division's ruling that the search was permissible under the plain view doctrine violates *People v. LaFontaine*, 92 N.Y.2d 470, 474, 682 N.Y.S.2d 671, 705 N.E.2d 663 (1998) inasmuch as the plain view exception was not at issue before the hearing court. Here, however, the People invoked the plain view doctrine before the hearing court, and the issue was decided adversely to defendant when that court denied suppression.
- 3 Specifically, we note that, given our conclusion that the seizure is unconstitutional, we have no occasion to consider defendant's contention with respect to the validity of the search.

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leg in 2010, I was placed in general population in the jail without proper medical treatment/attention for the bullet wound.

III. Relief: State what relief you are seeking if you prevail on your complaint.

1.5 million dollars for mental and emotional anguish. \$1.5 million for being denied to attend my son's funeral (had I not been in the (DCS) system in the first place) \$1.5 million for the nightmares over my false arrest and wrongful conviction which I'm on psych. meds for anti-depression. \$1.5 million for deprivation of character due to malicious prosecution. \$1.5 million for unlawful incarceration, etc.

I declare under penalty of perjury that on 8, 10, 2018 (date), I delivered this

complaint to prison authorities at Clinton Correctional Facility (name of prison), to be mailed to the United

States District Court for the Eastern District of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 8, 10, 18

Donald L. Sader II  
Signature of Plaintiff

Clinton Correctional Facility (Main)  
Name of Prison Facility or Address if not incarcerated

P.O. Box 2000  
Danamora, NY 12929

Address

18A0329  
Prisoner ID#